

Advice Summaries

September 2001

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance is also provided to persons whose duties under the Act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an “A,” while informal assistance is identified by the letter “I.”

Proposition 208 Largely Supplanted by Proposition 34

Proposition 34 repealed most of the provisions of Proposition 208, including all but two of the requirements at issue in the federal court challenge that led up to the 1998 injunction of Proposition 208. Recognizing this effect of Proposition 34, the federal court signed an order lifting the injunction of Proposition 208 effective January 1, 2001, the date on which Proposition 34 came into effect. As of the new year, twelve provisions of Proposition 208 became effective (principally, advertising disclosure requirements not challenged in the federal lawsuit and not repealed by Proposition 34). Two provisions of

Proposition 208 which were not repealed by the new measure,

but which were challenged in court (involving slate mail disclosure issues) remained under preliminary injunction. The trial court issued its final judgment on those two provisions on March 1, 2001, adjudicating the complaint of the slate mail plaintiffs and permanently enjoining Sections 84305.5 and 84503. On March 12, 2001, the Commission filed with the trial court a motion requesting that the court alter and amend its judgment to provide that the court’s judgment did not apply to Section 84305.5 as it existed prior to Proposition 208, and to further provide that Section 84503 is unconstitutional only as applied to slate mailers.

On May 8, 2001, Judge Karlton issued an order specifying that the court had only ruled on the constitutionality of § 84305.5 insofar as it was amended by Proposition 208, and had only ruled § 84503 unconstitutional as applied to slate mailers.

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Campaign

Ginny Vida, Executive Director
San Francisco Ethics Commission
Dated September 14, 2001
Our File Number: A-01-137

Committees filing campaign reports with the San Francisco Ethics Commission must use forms prescribed by the Fair Political Practices Commission (approved June 8, 2001) that embody the current disclosure requirements of the Act. The FPPC cannot waive those requirements.

James D. Sanders
Merced Community Action
Network
September 19, 2001
Our File Number: I-01-200

A candidate's economic interests will not preclude the candidate from becoming a city council member should he be elected to office. The conflict-of-interest provisions of the Act require public officials to recuse themselves on specific decisions when a conflict exists.

Garland S. Rosauro
Operating Engineers Local No. 3
September 27, 2001
Our File Number: I-01-205

An enforceable promise by a union to provide printing goods and services to a political party is a contribution. The contribution is made at the time the union enters into a written agreement to provide the goods and services, and the party expends funds or enters into a contract with a third party in reliance on that promise. Depending on when the contribution is made, it would be reportable in the union's next required campaign statement on Form 460, Schedule D.

Vincent Tallman
Public Affairs Support Services
Dated September 26, 2001
Our File Number: A-01-230

A letter of approval for modified Schedule A of Form 460 (Recipient Committee Campaign Statement) to be used by clients of Public Affairs Support Services required to file campaign statements on October 10, 2001. The modified Schedule A provides all required disclosure as specified in the Form 460, approved by the Commission on June 8, 2001. PASS clients will file all other schedules using the paper form.

Ginny Vida, Executive Director
San Francisco Ethics Commission
Dated September 28, 2001
Our File Number: A-01-231

A letter of approval for modified Form 460 (Recipient Committee Campaign Statement) to be used by San Francisco City and County committees required to file campaign statements on October 10, 2001. The modified form provides all information required for local candidates as specified in Form 460, approved by the Commission on June 8, 2001. Committees need not attach Schedules B and H if no reportable loan activity has occurred.

Richard Egan
DirectFile, Inc.
Dated September 27, 2001
Our File Number: A-01-233

A letter of approval for modified Form 460 (Recipient Committee Campaign Statement) to be used by clients of DirectFile, Inc. who are required to file campaign statements on October 10, 2001. The modified form provides all required disclosure as specified in the Form 460, approved by the Commission on June 8, 2001.

Conflicts of Interest

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W.E. "Bob" McClellan
City of El Cajon
Dated September 6, 2001
Our File Number: I-01-097

A number of revisions made to conflict-of-interest regulations related to real property may be applicable to requestor

Peter D. Moock
Kings County
Dated September 20, 2001
Our File Number: A-01-150

Three members of the board of supervisors may participate in a governmental decision regarding adoption of a "dairy element" amendment to the county's general plan if they each determine that the decision will not have a reasonably foreseeable material financial effect on their respective economic interest(s). A fourth member of the board may participate because the decision will not have a reasonably foreseeable material financial effect on his economic interest(s).

Peter D. Moock
Kings County
Dated September 20, 2001
Our File Number: A-01-151

Two county planning commissioners may participate in a governmental decision regarding adoption of a "dairy element" amendment to the county's general plan, if they each determine that the decision will not have a reasonably foreseeable material financial effect on their respective economic interest(s).

Fred Aguiar, Chairman
County of San Bernardino
Dated September 4, 2001
Our File Number: I-01-156

This is a discussion of conflicts of interest as they apply to a member of a board of supervisors whose son-in-law wishes to accept employment with a company which has an on-going contract with the supervisor's county.

Karin D. Troedsson
Town of Yountville
Dated September 4, 2001
Our File Number: A-01-172

Discussion of the "public generally" exception to the conflict-of-interest laws as they apply to the mayor of a small town where virtually all town officials live within 500 feet of the subject of any governmental decision.

Frederick G. Soley
City of Vallejo
Dated September 17, 2001
Our File Number: A-01-181

This letter applies conflict-of-interest analysis to an entire city council concerning the council's decision to adopt a city-wide program that would result in fees imposed on residential landlords. Some of the council members own residential rental properties and are homeowners as well.

Gavin Newsom
San Francisco Board of
Supervisors
Dated September 25, 2001
Our File Number: A-01-183

A member of the board of supervisors for the City and County of San Francisco has a conflict of interest in introducing legislation for free meter parking for clean air vehicles because it will have reasonably foreseeable material financial effect on his personal finances as an owner of such a vehicle. However, if the member completely and unequivocally renounces any right(s) to avail himself of the free parking privilege(s), he may introduce such legislation as it will not have a reasonably foreseeable material financial effect on his economic interest in personal finances.

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Steven Maviglio
Office of the Governor
Dated September 5, 2001
Our File Number: I-01-189

This letter gives informal advice to an elected official's spokesperson about the conflict-of-interest provisions of the Act and its potential impact on ownership of publicly traded stock in a given company. The letter advises that the Act does not, in and of itself, prohibit a public official's ownership of stock in a company.

Douglas P. Haubert
City of Signal Hill
Dated September 28, 2001
Our File Number: A-01-196

A public official has an economic interest in her employer, a chamber of commerce, provided she has received income of \$500 or more from that source; she may also have an economic interest in a chamber member if a performance bonus she receives for membership recruitment results in her receiving \$500 or more from a new chamber member.

Douglas Sherman
Desert Hot Springs City Council
Dated September 27, 2001
Our File Number: A-01-209

Nothing in the Act limits the ability of a candidate for city council to provide printing goods and services to the city during his candidacy because he is not a "public official" under the Act. If the candidate becomes a public official, he may not make, participate in making, or influence governmental decisions which will have a reasonably foreseeable material financial effect on his economic interests.

Miscellaneous

Laura McKinney
City of Berkeley
Dated September 28, 2001
Our File Number: A-01-145

Members of resident councils, government entities mandated by the federal HUD program which is executed by a city housing authority, are "public officials" under the Act.

SEI

Sen. K. Maurice Johannessen
State Senate
Dated September 25, 2001
Our File No. A-01-207

Although similar to investments in a diversified mutual fund, investments in a fully managed account are reportable as distinct investments.